

EDU #7793-92
C # 262-93
SB # 67-93

HENRY PRUITT, WILLIAM CHALEFF :
AND RICHARD SEGALL, :
PETITIONERS-RESPONDENTS, :
V. : STATE BOARD OF EDUCATION
BOARD OF EDUCATION OF THE CITY OF : DECISION
ENGLEWOOD, BERGEN COUNTY, :
RESPONDENT-APPELLANT. :

Decided by the Commissioner of Education, October 25, 1993

For the Petitioners-Respondents, Lake & Schwartz
(Robert M. Schwartz, Esq., of Counsel)

For the Respondent-Appellant, Gutfleish & Davis
(Allan S. Gutfleish, Esq., of Counsel)

On July 9, 1992, the Board of Education of the City of Englewood (hereinafter "Board") voted to withhold the salary increments of Henry Pruitt, William Chaleff and Richard Segall (hereinafter "petitioners"), tenured teaching staff members, for the 1992-93 school year, pursuant to N.J.S.A. 18A:29-14.¹ The petitioners were 12-month employees with contractual terms commencing on

¹ N.J.S.A. 18A:29-14 provides, in pertinent part:

Any board of education may withhold, for inefficiency or other good cause, the employment increment, or the adjustment increment, or both, of any member in any year by a recorded roll call majority vote of the full membership of the board of education. It shall be the duty of the board of education, within 10 days, to give written notice of such action, together with the reasons therefor, to the member concerned....

July 1. As a result of such action, petitioners filed a petition of appeal with the Commissioner of Education, contending that the Board had violated their tenure rights in withholding their increments and that such withholding was arbitrary, capricious and unreasonable.²

Petitioners subsequently filed a motion for summary decision, alleging that the Board had failed to act in a timely manner in withholding their increments. They maintained that such action was taken after commencement of the 1992-93 school year, thereby effectively causing them to suffer an unlawful reduction in their salaries in violation of their tenure rights. An Administrative Law Judge ("ALJ") recommended denying petitioners' motion, concluding that the performance of such employees could not be fully evaluated for purposes of withholding their increments until after completion of their duties on June 30.³

The Board thereupon filed a motion for summary decision, contending that petitioners' deficiencies as demonstrated in the record constituted a sufficient basis for the withholdings. Petitioners did not contest the substantive basis for the Board's action, but preserved their contention that such action had been untimely. The ALJ recommended granting the Board's motion for summary decision and dismissing the petition.

On October 25, 1993, the Commissioner rejected the ALJ's recommendation to deny petitioners' motion for summary decision.

² We note that petitioner Chaleff withdrew from this matter during the proceedings in the Office of Administrative Law and is not a party to the instant appeal.

³ Petitioners' request to the Commissioner for interlocutory review of such determination was rejected as untimely pursuant to N.J.A.C. 1:1-14.10(b).

The Commissioner stressed that a district board was required to take action to withhold salary increments prior to the beginning of the school year involved. Citing Newark Teachers' Union, Local 481, AFT/AFL-CIO, and Edna Smith v. Board of Education of the City of Newark, decided by the Commissioner, 1984 S.L.D. 1045, the Commissioner noted that the "beginning of the school year" for purposes of withholding the increments of 10-month employees had been defined as September 1, which, while not necessarily the date of commencement of actual service, was the date on which such employees' salary entitlements commenced. Accordingly, the Commissioner concluded that July 1 was the date the yearly period of service and concomitant salary entitlement began for the petitioners herein, 12-month employees under contract from July 1 to June 30, and that the Board could not have acted to withhold their increments for 1992-93 after June 30, 1992.

In so doing, the Commissioner rejected the Board's argument that a June 30 cutoff unfairly compromised its ability to evaluate employees, pointing out that staff evaluation was an activity which, of necessity, extended over a number of months. She found it entirely reasonable to expect that all required evaluations could be concluded in sufficient time to permit a district board to take any necessary action by June 30. Consequently, the Commissioner concluded that the Board's action on July 9, 1992 withholding petitioners' increments was untimely and, as a result, constituted a reduction in their compensation in violation of N.J.S.A. 18A:28-5. In light of such determination, the Commissioner found it unnecessary to address the Board's motion for summary decision regarding the substantive basis for the withholdings.

The Board filed the instant appeal to the State Board of Education, alleging that there was no legal basis for the Commissioner's determination to impose a June 30 deadline for withholding the salary increments of 12-month employees and that such a cutoff did not constitute sound educational policy.

On March 15, 1995, the Legal Committee issued a Report in this matter in which it found no basis for concluding that N.J.S.A. 18A:29-14 imposed different time frames for withholding the increments of 10- and 12-month employees. Petitioners filed exceptions to that Report, in which they indicated that July 1 was the commencement of the fiscal year and that, contractually, any increments to which 12-month employees were entitled took effect at that time.

We have carefully reviewed the record, including the stipulation of facts submitted by the parties, and, after further consideration in light of petitioner's exceptions, we affirm the decision of the Commissioner, as clarified herein. It is undisputed that petitioners Pruitt and Segall⁴ were employed under the terms of a collective bargaining agreement between the Board and the Englewood Public School Administrators. The parties further stipulated that "[a]s of July 1, 1992, all three Petitioners were twelve-month employees with their contractual term commencing on July 1 of the school year." Stipulation of Facts, at 3 (emphasis added). It is also undisputed that there was a salary schedule in effect in the district on July 1, 1992 which provided for increases in salary for the petitioners' positions. Id.

⁴ See, supra, n.2.

N.J.S.A. 18A:28-5 prohibits a district board from reducing a tenured teaching staff member in compensation, except for inefficiency, incapacity, unbecoming conduct or other just cause, and then only in the manner prescribed in the Tenure Employees Hearing Law, N.J.S.A. 18A:6-10 et seq. While a district board may withhold a staff member's salary increments, N.J.S.A. 18A:29-14, we find, under the particular facts in the record before us, that the action taken by the Board in this case to withhold the increments of petitioners Pruitt and Segall subsequent to the commencement of their 12-month terms at compensation fixed by the district's salary guide constituted an improper reduction in their compensation in violation of N.J.S.A. 18A:28-5.

We therefore affirm the decision of the Commissioner with regard to petitioners Pruitt and Segall on the appeal before us, as clarified herein.

Attorney exceptions are noted.

August 2, 1995

Date of mailing AUG 04 1995